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In re Application of
David L. Morris, Steve A.
Daniel, and Daniel J. Balbierz
Application No. 09/938,276
Filed: August 22, 2001
Attorney Docket No. 13724 853
Title: TISSUE SURFACE TREATMENT
APPARATUS AND METHOD

OFFICE OF PETITIONS

DECISION ON PETITION

This is in response to the petition pursuant to 37 C.F.R.
§ 1.47(a)¹, filed June 29, 2007.

On August 22, 2001, the application was filed, identifying David L. Morris, Steve A. Daniel, and Daniel J. Balbierz as joint inventors. The application was deposited without an executed oath or declaration. On April 27, 2007, a Notice of Allowability

1A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$200;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application, as set forth in 37 C.F.R. § 1.16(e);
- (3) a statement of the last known address of the non-signing inventors;
- (4) either
 - a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
 - b) proof that the non-signing inventor cannot be found or reached after diligent effort, and;
- (5) a declaration which complies with 37 C.F.R. § 1.63.

and Issue Fee Due was mailed, requiring, *inter alia*, a substitute oath or declaration. This Notice set a three-month period for reply.

Along with the present petition, Petitioner has submitted, *inter alia*, the petition fee, a declaration that has been executed by Mr. Balbierz, and a declaration of facts.

Petitioner has met requirements (1) - (4) of Rule § 1.47(a).

Regarding the fifth requirement of Rule § 1.47(a), the last known address differs from the address that appears on the declaration, and as such, it appears that the declaration contains an incorrect zip code for Mr. Morris.

The statement of facts sets forth that the zip code for Mr. Morris is 2217. The declaration lists the zip code for Mr. Morris is 1127. It appears that the zip code that appears in the last known address is correct. See footnote 1 on the second page of the petition.

It follows that the present petition must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. § 1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. § 1.47(a)". This is not a final agency action within the meaning of 5 U.S.C § 704.

On renewed petition, Petitioner will need to submit a new declaration that contains the correct address for the non-signing joint inventor. Alternatively, Petitioner may submit an Application Data Sheet.

Petitioner will note that an ADS filed with the application is not required to be signed unless the ADS includes a nonpublication request. 37 C.F.R. § 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 C.F.R. § 1.27(c)(2)(ii), filed in the application must be signed by an appropriate party. Therefore, an ADS or a supplemental ADS filed after the filing of an application must be signed in accordance with 37 C.F.R. § 1.33(b).

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be

submitted by mail², hand-delivery³, or facsimile⁴. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web⁵.

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the undersigned.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁶. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

3 Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314.

4 (571) 273-8300- please note this is a central facsimile number.

5 <https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html>

6 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.